

Internal Revenue Service

Department of the Treasury

Index Number: 708.03-00

Washington, DC 20224

199908043

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-111298-98

Date:

NOV 13 1998

A =

B =

Company =

Seller =

Newco =

PLR #1 =

PLR #2 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in reply to your letter dated May 8, 1998, and subsequent correspondence, requesting rulings on behalf of Company under § 708 of the Internal Revenue Code and regarding the applicability of two prior letter rulings.

The information submitted states that Company is a limited liability company that is classified as a partnership for federal income tax purposes. A holds a 99 percent capital and profits interest in Company and B holds a 1 percent capital and profits interest in Company.

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On Date 1, Company acquired certain operating interests in mineral properties and a net profits interest (PLR #1 Assets) from Seller in exchange for cash and additional payments payable from time to time. Seller also retained production payments. The Internal Revenue Service (the Service) issued to Company PLR #1 with respect to the transfer of the PLR #1 Assets.

On Date 2, Company acquired certain additional operating interests in mineral properties and net profits interests (PLR #2 Assets) from Seller in a similarly structured transaction. The Service issued to Company PLR #2 with respect to the transfer of the PLR #2 Assets.

Company decided to separate the PLR #1 Assets from the PLR #2 Assets. To accomplish this, in Date 3, Company divided into Company and Newco, a newly formed limited liability company that is classified as a partnership for federal income tax purposes. Immediately thereafter, A held a 99 percent capital and profits interest and B held a 1 percent capital and profits interest in both Company and Newco. Company holds the PLR #1 Assets and Newco holds the PLR #2 Assets.

Company represents that all of the PLR #1 Assets will continue to be owned by Company. Company also represents that there will not be any material changes to the purchase and sale agreement between Seller and Company regarding the PLR #1 Assets in connection with the transfer of the PLR #2 Assets.

Company represents that, after the division, all of the PLR #2 Assets will be owned by Newco. There will not be any material changes to the purchase and sale agreement between Seller and Company regarding the PLR #2 Assets in connection with this transfer.

You have requested rulings that, after the division, (1) both Company and Newco will be considered continuations of Company for federal income tax purposes; (2) PLR #1 will continue to apply to Company; and (3) PLR #2 will apply to Newco.

Section 708(b)(2)(B) provides that in the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than a resulting partnership the members of which had an interest of 50 percent or less in capital and profits of the prior partnership) shall, for purposes of § 708, be considered a continuation of the prior partnership.

Section 1.708-1(b)(2)(ii) of the Income Tax Regulations provides, in part, that upon the division of a partnership into

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two or more partnerships, the resulting partnership or partnerships shall be considered a continuation of the prior partnership if its members had an interest of more than 50 percent in the capital and profits of the prior partnership.

Based on the facts and representations submitted, we conclude that Company, after the division, and Newco are to be considered continuations of the present Company. In addition, we conclude that PLR #1 will continue to apply to Company after the division. PLR #2 will apply to Newco to the same extent that PLR #2 applied to Company.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding the tax consequences of the transfer of the PLR #2 Assets to Newco or the assumption of the liabilities associated with the PLR #2 Assets by Newco.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Company.

Sincerely,

(signed) H. GRACE KIM

H. GRACE KIM
Assistant to the Chief,
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs & Special
Industries)

Enclosures: (2)
Copy of this letter
Copy for § 6110 purposes

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